

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Citizens Utility Board Petition for)	CC Docket No. 96-98
Expedited Permanent Waiver of)	NSD-L-01-161
47 C.F.R. § 52.19(c)(3)(ii))	

COMMENTS OF VERIZON WIRELESS

Verizon Wireless hereby submits comments in response to the Common Carrier Bureau’s *Public Notice* regarding the Citizen Utility Board’s (“CUB”) petition for a permanent waiver of the mandatory ten-digit dialing rule, 47 C.F.R. §52.19(c)(3)(ii)¹, for area code overlays in the Chicago, Illinois metropolitan area (847 and 224 NPAs). CUB’s arguments in support of its petition are largely mooted by (1) the recent court of appeals decision upholding the Commission’s authority to mandate ten-digit dialing of local telephone calls coincident with area code overlays;² and (2) the virtual completion of customer education in Illinois informing consumers of the dialing change. Moreover, CUB fails both to demonstrate good cause sufficient for obtaining a permanent waiver of the Commission’s rule and to overcome the Commission’s longstanding precedent supporting ten-digit dialing in overlay areas. For these reasons, Verizon Wireless opposes CUB’s petition and requests that the Commission deny the relief requested.

¹ This rule is based on statutory authority, 47 U.S.C. §251(e) of the Telecommunications Act of 1996 (“1996 Act”).

² *People of the State of New York & Public Service Commission of the State of New York v. F.C.C.*, 267 F.3d 91 (2d Cir. 2001).

I. THE FCC HAS STATUTORY AUTHORITY TO REQUIRE MANDATORY TEN-DIGIT DIALING

CUB incorrectly asserts that the FCC may not preempt state jurisdiction with regard to local calling patterns.³ CUB attempts to limit the Commission's authority under 47 U.S.C. §251(e), which grants the agency exclusive jurisdiction over numbering administration for the United States. CUB reads §251(e) with 47 U.S.C. §152(b) (and Supreme Court precedent interpreting §152(b) as a bar to Commission action in intrastate telecommunications⁴) as the basis for its assertion that local dialing patterns are outside the scope of the FCC's authority under §251(e). Specifically, CUB maintains that §251(e) pertains to the equitable distribution of numbering resources, but does not purport to give the FCC authority over local calling procedures and thus does not overcome the bar of §152(b) regarding intrastate telecommunications matters.⁵

Recently, similar arguments were rejected by the United States Court of Appeals for the Second Circuit.⁶ The New York Public Service Commission ("NYPSC") challenged the FCC's mandatory ten-digit dialing rule for area code overlays, principally arguing that the rule violated §152(b)'s prohibition against federal jurisdiction over intrastate telecommunications matters.⁷ The FCC correctly countered that §152(b) has no

³ CUB petition at 8-10.

⁴ See *Louisiana Public Service Commission v. F.C.C.*, 476 U.S. 355, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986).

⁵ *Id.*

⁶ *NYPSC v. F.C.C.*, 267 F.3d at 94. The court of appeals did, however, grant New York City an additional period to implement ten-digit dialing. In the wake of the September 11, 2001 attack, the NYPSC petitioned the FCC for a further extension to allow the city to first rebuild its infrastructure and businesses. The FCC's December 26, 2001 *Order* granting an additional eight months balanced the extraordinary needs of New York City with the anti-competitive effects of an extended delay. The *Order* maintains the FCC's reasoned analysis that ten-digit dialing is necessary to ensure that competition will not be deterred in overlay codes as a result of dialing disparity. See *In the Matter of Joint Petition of the NYPSC, the New York State Consumer Protection Board and the City of New York for an Expedited Temporary Waiver of 47 C.F.R. §52.19(c)(3)(ii), Order*, CC Docket No. 96-98, NSD File No. L-01-158, released December 26, 2001 at ¶¶ 2-6.

⁷ *NYPSC*, 267 F.3d at 101.

application where Congress has expressly given the FCC jurisdiction over intrastate matters, as it did with §251(e)’s grant of exclusive jurisdiction over the North American Numbering Plan (“NANP”).⁸ The court agreed, analogizing the express grant of numbering authority in §251(e) to Congress’ injection of the FCC into the area of local competition, which expanded the FCC’s jurisdiction pursuant to the 1996 Act.⁹ Specifically, the court stated, “We therefore conclude that §251(e) grants the FCC authority to act with respect to those areas of intrastate service encompassed by the terms ‘North American Numbering Plan’ and ‘numbering administration.’”¹⁰ The court next turned to the specific question of whether those terms included the authority to dictate the number of digits dialed by consumers making local calls.¹¹ Despite the NYPSC’s arguments to the contrary, the court determined that under the *Chevron* analysis, it must defer to the Commission’s permissible construction of the statute in which the FCC holds that dialing patterns are part of the NANP.¹²

In addition, the court noted that the principal purpose of the FCC’s ten-digit dialing mandate is to ensure competition in local telecommunications markets – which is wholly consistent with the pro-competitive aims of the 1996 Act.¹³ The court stated, “Additionally, the Supreme Court concluded that the 1996 Act ‘unquestionably’ grants the FCC authority to regulate local telecommunications markets. These statements bolster the FCC’s view of its authority to impose the 10-digit dialing requirement, a pro-

⁸ *Id.*

⁹ *Id.* at 102.

¹⁰ *Id.*

¹¹ *Id.* at 102-106.

¹² *Id.* at 105 (citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467U.S. 837, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)).

¹³ *Id.* at 106.

competitive regulation.”¹⁴ Thus, the court concluded that the FCC’s assertion of jurisdiction over local dialing patterns was reasonable.¹⁵

Having disposed of the jurisdictional issue, the court determined that the FCC’s rulemaking promulgating the ten-digit dialing rule was not arbitrary and capricious. The court noted that the ten-digit dialing rule was based on the FCC’s determination that allowing seven-digit local dialing would have anti-competitive effects by favoring the ILECs.¹⁶ The FCC has considered and rejected the NYPSC’s arguments and should reject similar arguments raised by CUB.

II. CUB RAISES NO NEW ARGUMENTS JUSTIFYING A PERMANENT WAIVER OF THE TEN DIGIT DIALING RULE

CUB seeks a waiver from the ten-digit dialing rule, 47 C.F.R. §52.19(c)(ii), pursuant to 47 C.F.R. §1.3 of the Commission’s rules.¹⁷ The FCC may waive its rules if there is good cause shown and if “special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.”¹⁸ CUB does not raise any new or persuasive arguments or public interest justification sufficient to meet the legal standard for obtaining a waiver from the ten-digit dialing rule and well-settled FCC precedent. In fact, the arguments raised by CUB were rejected by the FCC in the *Third Reconsideration Order* in response to similar arguments raised by the NYPSC.¹⁹ Specifically, CUB asserts that: (1) no dialing disparity exists; (2) local number portability

¹⁴ *Id.* (citing *AT&T Corporation v. Iowa Utilities Board*, 525 U.S. 366, 199 S.Ct. 721, 142 L.Ed.2d 835 (1999)).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ CUB petition at 1.

¹⁸ *See Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹⁹ In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 *et. al*, *Third Order on Reconsideration of Second Report and Order and Memorandum Opinion and Order*, 14 FCC Rcd 17964 (1999) (“*Third Reconsideration Order*”).

(“LNP”) negates anti-competitive effects; (3) competitors have access to ample numbers in the 847 NPA; (4) the FCC’s number assignment and thousands-block number pooling rules prevent incumbent advantage; and (5) ten-digit dialing imposes needless expense and inconvenience on consumers.

The FCC concluded in the *Third Reconsideration Order* that requiring ten-digit dialing for every telephone call within and between all area codes covered by the overlay minimizes the dialing disparity that occurs when existing customers in the old NPA can continue to dial the majority of their calls by using seven digits, while customers placed in the new NPA will dial the majority of their calls using ten digits.²⁰ The dialing disparity favors entrenched incumbent providers because customers seeking to avoid ten-digit dialing will prefer carriers with a legacy pool of customers and numbers in the old NPA from which to draw. The FCC disagreed with claims that LNP will reduce the competitive disparity that the mandatory ten-digit dialing rule seeks to address.²¹ The Commission recognized that LNP would not obviate the need for the rule.²² For example, LNP does not resolve the dialing disparity with respect to new customers, existing customers that may desire additional telephone lines, or customers of carriers that are not required to become LNP capable. Similarly, CUB’s focus on the FCC’s number assignment rules and thousands-block number pooling is misplaced. While these numbering rules have helped to ensure efficient use of scarce resources and conservation measures like pooling have helped to extend the life of area codes, these measures do not negate the dialing disparity once the new NPA goes into effect. Newer entrants will still

²⁰ *Third Reconsideration Order* at ¶¶28-45.

²¹ *Third Reconsideration Order* at ¶40.

²² *Id.* at ¶42.

need to serve a majority of their customers with numbers obtained from the new NPA. The ten-digit dialing rule is still needed to overcome the dialing disparity.

CUB's assertion that competitors have access to ample numbers in the 847 NPA is belied by current facts. The NANPA declared the 847 to be depleted of full NXX codes as of August 31, 2001. The Illinois Commerce Commission's ("ICC") effort to reclaim unused numbering resources was aggressive and effective, up to a point. The 847 NPA is in dire need for relief. Recognizing the critical nature of the situation in the Chicago metropolitan area, the ICC has allowed relief to proceed. In fact, during the pendency of CUB's petition, the ICC has mandated the implementation of customer education measures for citizens affected by the dialing change. Those efforts will conclude – and mandatory ten-digit dialing will become effective – two days *before* reply comments are due in this proceeding. The ICC's actions ordering area code relief and customer education is an explicit recognition of the need for area code relief in the 847 NPA and as a practical matter, renders CUB's petition moot. Furthermore, the industry has already incurred considerable expense in completing virtually all of its education efforts. As of the date of this filing, we are only eight calendar days away from mandatory ten-digit dialing becoming effective in the 847 and 224 NPAs.

Area code relief imposes costs and inconveniences on everyone, not the least of all telecommunications carriers charged with implementing relief and educating their customers. Implementing ten-digit dialing to mitigate the dialing disparity caused by overlays has not been an unreasonable or unduly burdensome task. As the court aptly noted in *NYPSC v. F.C.C.*, and which will most likely prove true for the Chicago metropolitan area, "Although New York has long resisted this rule, New York City will

thus soon join the ranks of several major metropolitan areas, including Boston, Philadelphia, Pittsburgh and Denver, that have implemented 10-digit local call dialing apparently without great incident.”²³ Other cities where ten-digit local dialing has been implemented successfully include Portland, Dallas, Fort Worth, Atlanta and Miami.

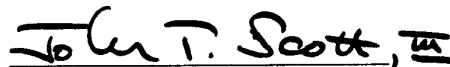
III. CONCLUSION

For the foregoing reasons, the Commission should deny CUB’s petition for permanent waiver of the ten-digit dialing rule for the 847 and 224 NPAs. Furthermore, the Commission should also deny any subsequent petitions for permanent waivers of the ten-digit dialing rule for any other NPA in the Chicago metropolitan area.

Respectfully submitted,

VERIZON WIRELESS

By:

A handwritten signature in black ink that reads "John T. Scott, III". The signature is written in a cursive style with a horizontal line underneath the name.

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²³ See *NYPSC v. F.C.C.*, 267 F.3d at 109.